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EXAMINER

SMALLEY, JAMES N

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3727

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/602,905

Applicant(s)

HOFF, JAMES A.

Examiner

James N. Smalley

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-9, 11, 13-18 and 28 is/are pending in the application.
- 4a) Of the above claim(s) 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-9, 11 and 13-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 8-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Bradshaw et al. US 4,105,135.

Bradshaw '135 teaches a closure plug (1) comprising a threaded body for receipt by a threaded flange (10), a radial flange (6), and a plurality of unitary axially-protruding projections (8) from an outer portion of the flange.

Regarding claim 1, Examiner notes the claim preamble is drawn to a closing plug for receipt by a threaded flange (emphasis added). The axially-protruding projections/scallops (8) of Bradshaw '135 are capable of being used in the intended manner, i.e. as abutments for limiting the threaded advancement of the plug by abutment against a surface of a drum end. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Regarding claims 5 and 9, Examiner notes the flat surface is read to be the surface extending radially outwardly from the longitudinal axis, along the bottom edge of the curved flange (8). This surface is furthermore perpendicular to a longitudinal axis of the plug.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art

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to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-5, 7 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradshaw et al. US 4,105,135.

Bradshaw '135 does not teach the radial flange having a modified hex-shape, or further having six projections. However, Bradshaw '135 does teach in col. 1, lines 38-42, the downwardly deformed scallops (8) are provided as actuating surfaces for the application of torque by hand engagement.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Bradshaw '135, providing six projections, motivated by the benefit of increasing the number of points whereby a hand may engage the plug to provide opening torque.

Furthermore, it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. The decision notes, "Combination cannot be patented unless it is synergistic, that is, results in effect greater than sum of several effects taken separately." In the instant case, adding a sixth scallop to Bradshaw '135 will not synergistically increase the benefit afforded by the scallops. In other words, adding a sixth flange will not provide an increased torque-generating benefit greater than the sum afforded by each scallop.

5. Claims 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baughman US 5,680,953.

Baughman '953 teaches a plastic drum closure, comprising a threaded drum opening (21) and a plug (20), with a radial flange (69), an annular axially protruding projection (51), defining a groove (44) and gasket (61).

Baughman '953 does not teach the axial projection comprising a plurality of projections. However, Examiner notes the projection could be formed of a plurality of projections without interfering with the proper function of the device. The groove (44) could still be formed despite the projection being formed of a plurality of projections. Furthermore, the gasket will still be properly secured, due to the presence of the annular wall (32).

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It would have been obvious to one having ordinary skill in the art to form the annular projection of a plurality of projections. It has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

6. Claims 11 and 13-18 rejected under 35 U.S.C. 103(a) as being unpatentable over Ziegler et al. US 4,124,140 in view of Bradshaw et al. US 4,105,135.

Ziegler '140 teaches a threaded flange (26) for assembly into a drum end, a threaded closing plug (34), and a gasket (28).

Ziegler '140 does not teach a closure with a plurality of spaced-apart axially protruding projections.

Bradshaw '135 teaches a closure (1) with a plurality of spaced-apart axially protruding projections (8).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the closure cap of Bradshaw '135 on the closure of Ziegler '140, because such is an equivalent closure equally capable of sealing the drum opening.

Examiner notes applying the closure of Bradshaw '135 to the drum opening of Ziegler '140, perhaps in the embodiment of figures 8-9, will result in a connection between the axially-protruding projections and the drum end, while simultaneously compressing gasket (28). Comparing between Ziegler '140, figure 8, and Bradshaw '135, figure 4, it can be seen that the neck end of Bradshaw '135 is flared conically downwardly and outwardly from the neck opening, while the neck of Ziegler '140 extends outwardly horizontally, making it likely the axial projections (8) of Bradshaw '135 will contact the drum end.

Regarding claims 14-18, Bradshaw '135 does not teach the radial flange having a modified hex-shape, or further having six projections. However, Bradshaw '135 does teach in col. 1, lines 38-42, the downwardly deformed scallops (8) are provided as actuating surfaces for the application of torque by hand engagement.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Bradshaw '135, providing six projections, motivated by the benefit of increasing the number of points whereby a hand may engage the plug to provide opening torque.

Furthermore, it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. The decision notes, "Combination cannot be patented unless it is synergistic, that is, results in effect greater than sum of several effects taken separately." In the instant case, adding a sixth scallop to Bradshaw '135 will not synergistically increase the benefit afforded by the scallops. In other words, adding a sixth flange will not provide an increased torque-generating benefit greater than the sum afforded by each scallop.

Response to Arguments

7. Applicant's arguments with respect to claims 1-27 have been considered but are moot in view of the new ground(s) of rejection.

8. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:
See attached PTO-892 teaching various threaded closures for drum openings.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns


NATHAN J. NEWHOUSE
PRIMARY EXAMINER
6/27/05